

INSTRUCTIONS

UNIFORM APPLICATION FOR LICENSURE/REGISTRATION

This application will not be considered complete until this Office receives all fees and required information. Failure to provide all documentation will result in increased processing time and possible denial of the application. All blanks must be completed. If N/A, so state.

- No. 1 Full legal name of entity. The only instance, in which the "applicant" may be a natural person, is if the applicant is a sole proprietorship. Otherwise, the "applicant" is a separate legal entity that will be conducting business. The name inserted on this line must be **identical** to the name filed with the Secretary of State from the state in which you are applying.
- No. 2 If applicant operates under a trade or assumed name, the name inserted on this line must be **identical** to the name that appears on the certificate of registration filed with the proper state authority in which the applicant is applying (e.g. Secretary of State).
- No. 3 Street address of the office location, that will appear on the face of the license.
- No. 4 The mailing address of the applicant, if different from No. 3. If same, so state.
- No. 5 Main office phone number, fax number, web site and/or e-mail address.
- No. 6 Check the type of organization. Attach copies of Certificate of Authority, Articles of Incorporation or Organization, Partnership Agreement and Bylaws, whichever is applicable.
- No. 7 Insert the state in which the applicant was originally registered and date that the applicant was incorporated, organized or formed.
- No. 8 Out-of-state applicants must submit documentation evidencing that your company/entity is authorized to do business in the state in which you are applying. (Registration Certificate from the proper authority such as the Secretary of State)
- No. 9 Self-explanatory
- No. 10 Self-explanatory
- No. 11 Complete name, address, and phone number of the Registered Agent for Service of Process. (Sole Proprietor's put "N/A.") Registered Agent must be a person located in the state in which you are applying.
- No. 12 Self-explanatory
- No. 13 Self-explanatory
- No. 14 Self-explanatory
- No. 15 List the states in which the applicant/registrant is conducting or has conducted similar mortgage business.
- No. 16 List the name, title, complete address, and percentage of ownership of each director, manager, member, partner and all 10% or greater equity owners. Additional sheets may be copied and attached, if necessary. For purposes of this application, "equity owners" includes stockholders, members, partners, or limited partners that own equity in the business seeking licensure. If applicant is a subsidiary, list requested information for parent company.
- No. 17 Self-explanatory
- No. 18 Information concerning the parent company, if the applicant is a subsidiary and an organizational chart.

ALL ATTACHMENTS MUST BE SUBMITTED

REVISED 10/22/02	UNIFORM APPLICATION FOR LICENSURE/REGISTRATION			TYPE OF LICENSE APPLIED FOR:
1.	Full legal name of applicant (<i>attach secretary of state certificate from the state in which you are applying</i>):			
2.	Trade name, dba, or assumed name of applicant, if applicable: (<i>attach registration documentation/certificate</i>)			Fed. Tax I.D.#:
3.	Principal office street address:			
	City:	State:	Zip Code:	
4.	Mailing address (street or post office box):			
	City:	State:	Zip Code:	
5.	Business phone number:		Business fax number:	
	E-mail address:		Web site: www.	
6.	Type Of Organization: <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company (LLC)	<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> General Partnership	<input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Other (Explain)	
7.	State/Commonwealth of Incorporation:		Date of Incorporation/Organization:	
8.	If a foreign corporation or other type of legal entity, state the date that the entity filed with the proper state authority in which the applicant is applying. (e.g. secretary of state), if so required:			
9.	Physical address of location at which the official books and records of the applicant are kept:			
	City:	State:	Zip Code:	Phone No:
10.	Does applicant engage in mortgage activity through electronic or automated mediums, such as the internet? () If yes, attach description of activity and web site address () No			
11.	Registered agent for service of legal process: (<i>must be located in state/commonwealth in which you are applying</i>)			
	Name:			
	Mailing Address:			
	City:	State:	Zip:	Phone Number:
12.	Person authorized to answer questions pertaining to this application:			
	Name:			
	Address:			
	City:	State:	Zip Code:	Phone No:
	E-Mail Address:		Fax No:	
13.	Person authorized to answer regulatory compliance issues:			

	Name:				
	Address:				
	City:	State:	Zip Code:	Phone No:	
	E-Mail Address:		Fax No:		
14.	Person authorized to answer consumer complaints:				
	Name:				
	Address:				
	City:	State:	Zip Code:	Phone No:	
	E-Mail Address:		Fax No:		
15.	List all states in which applicant is conducting or has conducted mortgage business related to this application: (attach list if necessary)				
	State or states in which business/was conducted	Type of business conducted	Names under which applicant <u>is</u> or <u>has</u> operated	Original license date	Active or Inactive
16.	List all principal officers and title held, directors, partners, and members. (attach addendum if necessary)				
	Name & Title	Principal Office Address		% Ownership	
	Name & Title	Principal Office Address		% Ownership	
	Name & Title	Principal Office Address		% Ownership	
	Name & Title	Principal Office Address		% Ownership	
	Name & Title	Principal Office Address		% Ownership	
List all persons that have a 10% or greater equity interest not listed above.					
	Name	Principal Office Address		% Ownership	
	Name	Principal Office Address		% Ownership	
	Name	Principal Office Address		% Ownership	

17.	Read the following questions carefully. If the answer is yes to any of the questions, attach a full written explanation. Include name, dates, court name and address, case number, judgment amounts.		
A.	Are there any civil or criminal proceedings pending against the applicant <u>or</u> civil or criminal convictions, plea of nolo contendere or plea to lesser charge entered against the applicant that involve theft, fraud, dishonest dealings or moral turpitude?	<input type="checkbox"/> Yes, attach explanation <input type="checkbox"/> No	
B.	Is/has the applicant ever been the subject of a bankruptcy, assignment for the benefit of creditors, receivership, conservatorship, or any similar proceeding?	<input type="checkbox"/> Yes, attach explanation <input type="checkbox"/> No	
C.	Has any other state or federal government agency denied the applicant a license	<input type="checkbox"/> Yes, attach explanation <input type="checkbox"/> No	
D.	Is/has the applicant been the subject of any administrative action or enforcement proceeding by any state or federal government agency involving fines, penalties, or the revocation or suspension of any business license or permit?	<input type="checkbox"/> Yes, attach explanation <input type="checkbox"/> No	
18.	Is applicant a subsidiary?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Parent company name:		
	Mailing address:		
	City:	State:	Zip Code:
	If applicant's parent company is a corporation, state where and when incorporated.		
	State Incorporated:	Date Incorporated:	
IN ADDITION TO ALL OF THE ABOVE, APPLICANT MUST SUBMIT THE FOLLOWING ATTACHMENTS:			
A.	Certificate of Resolution form stating who can sign official documents on behalf of the applicant.(See Attachment A)		
B.	Biographical / Authority Sheet completed and notarized for everyone listed in #16.(See Attachment B)		
C.	A current 10-year employment/experience form for everyone listed in #16 and sole proprietors.(See Attachment C)		
D.	Residence addresses for the last 10 years for everyone listed in #16.(See Attachment D)		
E.	Provide copies of the following, whichever are applicable: <ol style="list-style-type: none"> 1. Certificate of Good Standing from the Secretary of State or other state authority in which the applicant was originally incorporated or organized. 2. If applicant is a corporation, provide a copy of Articles of Incorporation, including amendments. 3. If applicant is a Limited Liability Company (LLC) provide a copy of the Articles of Organization and operating agreement. 4. If applicant is a general partnership or a Limited Liability Partnership (LLP) provide a copy of the Partnership agreement. 		

APPLICATION AFFIDAVIT

Signed this _____ day of _____ 20_____.

Name of Company

By:

Signature of Authorized Person

Print Name and Title

STATE OR COMMONWEALTH OF _____
COUNTY /PARISH OF _____

_____ personally came and appeared before me, the undersigned
(authorized person above)
notary, and declared under oath that she/he is the _____ of
(Title)
_____, that she/he is authorized to sign and submit the attached
(Name of Company)
application and that all statements and representations made therein are true and correct to the best of
his/her knowledge, information and belief.

Signature of the authorized person

Sworn to and subscribed before me on this the _____ day of _____ 20_____.

Notary Public

Print Name of Notary Public

My Commission Expires: _____

(Seal)

CERTIFICATE OF RESOLUTION

This form must be completed by all applicants, except sole proprietors, and must include the applicant's full name, including trade name(s), DBA name(s), or assumed name(s), if applicable.

This is to certify that at a ☐ Regular or ☐ Special meeting of the ☐ Board of Directors/or

☐ Members/ or ☐ Partners of _____
Name of applicant/company

organized under the laws of the State / Commonwealth of _____ held at

_____ Street address _____ City _____ State _____ Zip Code
on the _____ day of _____, 20____, the following resolution was

duly and legally presented and adopted, to wit:

It being the desire and purpose of _____
Name of applicant/company

to be licensed or registered, BE IT RESOLVED, that _____
Name of authorized representative

who is the _____ of this ☐ limited liability company, ☐ corporation,
Title of authorized person

☐ limited partnership, or ☐ general partnership is, in his/her official capacity, hereby authorized

and directed to prepare, execute, verify, and present to the proper state authorities, for filing, a written

application for licensure or registration. Further, he/she is hereby authorized and empowered to make, sign

and execute all documents pertaining to the application and to perform every act whatsoever as required to

file the application on behalf of _____
Name of applicant/company

AUTHORIZED SIGNATURE

(If corporation, this form must be signed by Secretary)

Print Name

TITLE : _____

DATE: _____

Attachment [B]**AUTHORITY TO OBTAIN INFORMATION FROM OUTSIDE SOURCES****THIS FORM MUST BE SUBMITTED FOR EACH PERSON LISTED IN QUESTION # 16**

Name:	Social Security #:
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Home Address, City, State, Zip Code:

Date of Birth:	Home Telephone No:
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Read the following questions carefully. If the answer is "yes" to any of the questions, attach a full written explanation. Include names, dates, court name and address, case number, judgment amounts.

Have any civil judgments been entered against you during the past 10 years?	() Yes, attach explanation () No
---	------------------------------------

Are there any civil proceedings pending against you or civil judgments entered against you which involve fraud or dishonesty?	() Yes, attach explanation () No
---	------------------------------------

Have you been convicted of or entered a plea of Nolo Contendere to a felony?	() Yes, attach explanation () No
--	------------------------------------

Have you ever been convicted of or entered a plea of Nolo Contendere to any misdemeanor involving theft, fraud, or dishonesty?	() Yes, attach explanation () No
--	------------------------------------

Have you been the subject of a bankruptcy, assignment for the benefit of creditors, receivership, conservatorship, or any similar proceeding?	() Yes, attach explanation () No
---	------------------------------------

Have you been subject to any enforcement proceedings by any State or Federal government agency involving the revocation or suspension of any business, fines or penalties?	() Yes, attach explanation () No
--	------------------------------------

Have you been discharged for cause or been requested to resign from any employment position?	() Yes, attach explanation () No
--	------------------------------------

I hereby authorize the licensing authority, to make inquiries from any financial institution, credit bureau or law enforcement agency for the purpose of determining his/her financial responsibility, character and fitness in connection with an application for a license or registration.

I hereby certify that the information on this form is, to the best of my knowledge, complete and accurate.

Signature

SUBSCRIBED BEFORE ME ON THIS _____ day of _____, 20 _____.

AT: _____, _____
(CITY) (STATE or COMMONWEALTH)

PRINT NAME OF NOTARY PUBLIC:	SIGNATURE OF NOTARY PUBLIC:
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Attachment [C]**EMPLOYMENT/EXPERIENCE HISTORY FOR THE LAST 10 YRS**

Each sole proprietor, officer, director, partner, member, manager and 10% or greater equity owner of applicant must fill out this form. You may submit your own resume' as long as it includes the information listed below. Explain any gaps in work history. *(Attach additional sheets, if necessary)*

NAME: _____

Employer Name and Address	Position/Brief Description of Duties	Start Date	End Date	Reason for Leaving

Attachment [D]**LIST RESIDENTIAL ADDRESSES FOR THE LAST 10 YRS**

Each sole proprietor, officer, director, partner, member, manager and each 10% or greater equity owner of applicant must fill out this form. *(Attach additional sheets, if necessary)*

NAME: _____

Residential Address	Start Date	End Date

DIRK KEMPTHORNE
GOVERNOR

GAVIN M. GEE
DIRECTOR

STATE OF IDAHO
DEPARTMENT OF FINANCE
700 W. STATE STREET, 2nd FLOOR – BOISE ID 83702
P O BOX 83720 - BOISE ID 83720-0031
TELEPHONE: (208) 332-8002
FAX: (208) 332-8099
www.idahofinance.com



IDAHO ADDENDUM

Mortgage Broker/Lender License Application

The following items must be included with any submission for a mortgage broker/lender license in addition to the requirements of the uniform application form. Each location desiring to conduct business in Idaho must be separately licensed and will require a separate application form. Attachments for items 1, 4, and 5, below, must be submitted for all branch applications.

1. **Qualified Person in Charge:** This person must demonstrate a minimum of three (3) years' experience specifically in residential mortgage brokering/lending. Idaho Code § 26-3108(2)(b). This person does not have to be an owner, officer, member, partner or director. **Attachments B, and C/D must be completed for this person.** Detailed job description/duties, not just title, must be provided. If a resume is submitted it must contain names, addresses, dates (mo/yr) of employment and detailed job descriptions/duties for all employers.

Qualified Person in Charge

Business Address

Phone

2. **Evidence of filing with the Idaho Secretary of State's office:** This may be a file-stamped (accepted) copy of the appropriate application or a copy of the actual certificate. If a "d/b/a" or "fictitious" business name will be used in Idaho, a file-stamped copy of the Certificate of Assumed Business Name will also be required. Contact (208) 334-2300 or www.idsos.state.id.us for further information.
3. **Samples of all origination forms that Idaho borrowers will be required to sign or acknowledge prior to closing.** Idaho Code § 26-3105(8). Do **not** include closing documents such as the Note, Deed of Trust, etc. *Form samples should also include those used to satisfy the four (4) required disclosures under Rule 50.(IDAPA 12.01.10.50.* Model forms for Rule 50.03 and 50.05, along with a guideline "outline" for Rule 50.01 are available on the Department's website at www.idahofinance.com and are included in any application package that was requested by mail. Applicant will need to provide its form used to satisfy Rule 50.04.
4. **Application Fee:** \$350.00 payable to the Idaho Department of Finance for each application/location.
5. **Surety Bond or Certificate of Deposit:** Bond or CD must be in the minimum amount of \$25,000 for the "Home/Main" office, increased by increments of \$10,000 for each additional branch location. There is no maximum cap. The **original** bond or CD must be provided to this office. The bond must be fully executed by both the surety company and applicant. Subsequent increases to the bond may be in the form of a fully executed rider. A CD must be payable to the Idaho Department of Finance, with interest payable to the applicant entity. A CD must remain in place for a period of three (3) years after cessation of Idaho licensure.



Check this box if you intend to **fund**, either through a warehouse line or other entity-owned funds, subordinate lien financing (i.e. second mortgages, equity lines, etc). If marked, this application will also serve as the application for the Idaho Regulated Lenders License and **subject the applicant to the provisions of the Idaho Credit Code, its renewals and reporting requirements.**

Please submit all items simultaneously. All approved licensees are posted to the Department's website daily.

YOU ARE NOT AUTHORIZED TO ENGAGE IN MORTGAGE BROKERING OR MORTGAGE LENDING ACTIVITIES IN IDAHO UNTIL YOU HAVE RECEIVED A LICENSE.

Return this Addendum with your application package.



STATE OF IDAHO
DEPARTMENT OF FINANCE
Consumer Finance Bureau
700 West State Street, 2nd Floor
P.O. Box 83720
Boise, ID 83720-0031

BOND # _____
Effective date _____ 20____

SURETY BOND FOR MORTGAGE BROKER/LENDER

KNOW ALL MEN BY THESE PRESENTS, that we, _____, as Principal and _____, a corporation duly incorporated under the laws of the state of _____, and authorized to do business in the state of Idaho, as surety, are held and firmly bound unto the State of Idaho in the penal sum of \$_____ for the payment of which we hereby bind ourselves, our and each of our heirs, assigns, executors and administrators, jointly and severally, firmly by these presents.

In the event that the Principal or any employee or agent of the Principal has violated any of the provisions of chapter 31, title 26, Idaho Code, or of a rule or order lawfully made pursuant to chapter 31, title 26, Idaho Code, or federal law, or regulation pertaining to the mortgage banking or mortgage lending activities set forth in section 26-3102, Idaho Code, and has damaged any person by such violation, then the bond shall be forfeited and paid by the surety to the state of Idaho for the benefit of any person so damaged.

This bond shall be a continuing obligation of the surety. The surety's liability under this bond for any claim that is made thereunder, either individually or in the aggregate, shall in no event exceed the penal amount of the bond issued.

PROVIDED, FURTHER, that the surety may cancel this bond as an entirety by giving thirty (30) days notice to the Idaho Department of Finance at Boise, Idaho, and if canceled by the surety, copy of said notice of cancellation shall be sent by registered mail to the Principal hereunder. Said notice to the Idaho Department of Finance shall also be sent by registered mail. In case of such cancellation by the surety, no further obligation shall be incurred under this bond after the expiration of said thirty (30) days, but the liability of the Principal and surety shall apply as above set out as to any acts or omissions which may have occurred prior to the effective date of such cancellation.

(NAME OF MORTGAGE BROKER/LENDER)

(SIGNATURE OF OFFICER OF THE FIRM)

Date

(NAME OF SURETY COMPANY)

(SIGNATURE OF OFFICER OF SURETY COMPANY)

Date

(TITLE OF OFFICER)

Licensor Information Disclosure

(Rule 50.01 IDAPA 12.01.10.50.01)

Licensor Name	Home/Main Office Phone Number
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Home/Main Office Address	City	State	Zip
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Originating Office Address	City	State	Zip
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Loan Originator	Phone Number
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We are acting as a _____ Broker _____ Lender

We are acting as an _____ Independent Contractor _____ Agent on your behalf.

BROKER/LENDER shall use its best efforts to obtain a satisfactory mortgage loan commitment on behalf of/for BORROWER, and for compensation will perform services normally and customarily performed in connection with the origination of mortgage loans. These services may include the following:

- ☐ **Yes** ☐ **No** taking information from the borrower and filling out the application;
- ☐ **Yes** ☐ **No** analyzing the prospective borrower income/debt and pre-qualifying the prospective borrower to determine the maximum mortgage said borrower can afford;
- ☐ **Yes** ☐ **No** educating the prospective borrower in the mortgage financing process, including but not limited to, loan products, closing costs, monthly payments and post-closing changes to rate/payment if applicable;
- ☐ **Yes** ☐ **No** collecting financial information and related documents;
- ☐ **Yes** ☐ **No** verifying employment and assets;
- ☐ **Yes** ☐ **No** verifying mortgage and rental histories;
- ☐ **Yes** ☐ **No** ordering appraisals, inspections, flood certifications and preliminary title reports;
- ☐ **Yes** ☐ **No** providing state and federal disclosures such as, but not limited to, good faith estimates, truth in lending statements and privacy policies;
- ☐ **Yes** ☐ **No** ordering credit reports and assisting borrower in understanding credit problems, credit scores and their affect on the financing request;
- ☐ **Yes** ☐ **No** maintaining regular contact with the borrower and their designated parties to keep them apprised of the status of the application;
- ☐ **Yes** ☐ **No** ordering and satisfying conditions of a loan approval;
- ☐ **Yes** ☐ **No** ordering/preparing closing documents;
- ☐ **Yes** ☐ **No** explaining, in detail, any and all compensation received by BROKER/LENDER

from BORROWER, and/or on behalf of BORROWER or BORROWER's loan, however paid, whether received directly (front end) or indirectly (back end).

☐ Yes ☐ No Other:

BORROWER agrees to provide BROKER/LENDER true, complete and accurate information upon request. BORROWER agrees to secure any information or documentation that BROKER/LENDER may not be able to obtain due to policies of employers, lending agencies, government agencies, etc. BORROWER(S) agrees to pay costs associated with securing said information, if any.

BORROWER acknowledges that acceptance and processing of a loan application does not constitute a commitment to lend, nor does it constitute an approval of said application. BORROWER understands that the terms and conditions requested are available at the time of application, but that they may change without notice and that BORROWER(S)' application may not meet the requirements for those terms and conditions.

BORROWER understands that the application may be cancelled **in writing** at any time. However, if third party costs have been incurred by BROKER/LENDER, such as appraisal and credit report, BORROWER agrees to reimburse BROKER/LENDER for said third party costs upon receipt of a written itemized statement of costs incurred. BROKER/LENDER acknowledges that if it is unable to obtain a satisfactory commitment for BORROWER, within three (3) business days of receiving a written cancellation from BORROWER and the receipt of any third party cost reimbursement, such as appraisal and credit report costs, BROKER/LENDER will assign all rights, title and interest in the appraisal, and transmit said appraisal and any documentation provided by the BORROWER, to the licensed or exempt BROKER/LENDER requested by BORROWER.

Any COMPLAINT regarding this loan transaction shall need to be filed in writing with the BROKER/LENDER, or the Idaho Department of Finance, P.O. Box 83720, Boise, Idaho 83720-0031. Complaint forms may be obtained on the internet at <http://finance.idaho.gov> or if preferred to receive by mail, by calling (208) 332-8002.

By signing below, LOAN ORIGINATOR certifies that a copy of this signed disclosure has been delivered to the BORROWER and BORROWER acknowledges receipt of a copy of said disclosure.

Originator Signature

Date

Borrower Name (printed)

Date

Borrower Signature

Borrower Name (printed)

Date

Borrower Signature

Model Form

INTEREST RATE LOCK/FLOAT INFORMATION

DATE: _____
APPLICANT(S): _____
PROPERTY ADDRESS: _____
LOAN AMOUNT: _____
TERM: _____

() **I DO NOT** WANT AN INTEREST RATE LOCK IN AT THIS TIME.

I understand that the lender cannot predict interest rate changes. If I want to obtain an interest rate commitment in the future, I may do so at any time up to _____ calendar days before my scheduled closing by signing an Interest Rate Lock In Agreement. That Agreement will be subject to the Lender rate commitment policy in effect on that date.

I understand that it is my responsibility to advise the Lender/Broker of my decision to lock-in, and that if I do not obtain an interest rate commitment, the interest rate and total fees on my loan (if approved) will be set by the Lender within _____ calendar days before my mortgage loan closes.

() I/WE HEREBY ACKNOWLEDGE that a lock-in option is **NOT** available for the program I/we have selected. I/We further acknowledge that the interest rate contained in my/our application is the rate at which the Lender is currently accepting applications with similar terms as the application and is **subject to change depending upon market interest rates available to the Lender.**

I UNDERSTAND THAT THIS INTEREST RATE LOCK INFORMATION IS NOT AN APPROVAL OF MY LOAN APPLICATION OR A COMMITMENT BY THE LENDER TO MAKE ME A LOAN. I WILL RECEIVE A LETTER TELLING ME WHETHER MY LOAN APPLICATION HAS BEEN APPROVED OR DENIED.

I have carefully read and understand the above information.

_____ APPLICANT	_____ DATE	_____ APPLICANT	_____ DATE
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_____ APPLICANT	_____ DATE	_____ APPLICANT	_____ DATE
--------------------	---------------	--------------------	---------------

_____ LENDER/BROKER REPRESENTATIVE	_____ DATE
---------------------------------------	---------------

INTEREST RATE LOCK-IN CONFIRMATION AGREEMENT

Borrower(s) Name: _____ Date of Lock-In: _____

Property Address: _____

I/We have applied for a mortgage loan on the above mentioned property and request the following loan lock terms:

Loan Type: _____ Loan Term: _____

Loan Amount: _____ Interest Rate: _____

Index: _____ Margin: _____ Floor Rate: _____

Payment/Rate Adjustments: _____ 6 Months _____ Annual _____ Other

Annual or Other Adjustment Cap: _____ Life Cap: _____

Loan Origination Fee: _____ Discount Points _____

Yield Spread Premium: _____ Lock-in Fee: _____

Lock Term: _____ Expiration Date: _____

Comments/Limitations: _____

This lock-in agreement is not a commitment or agreement to grant your loan request or a loan approval. The loan must be fully underwritten and all conditions must be met prior to the loan closing. It is important that you provide all requested documentation in a timely manner. Lock-in terms will remain in effect through the expiration date except as noted below.

The locked-in interest rate and terms apply solely to the type of mortgage loan for which you have applied and have requested this lock-in for, and has been set as a result of the repayment term, loan amount, program, property and anticipated closing date. You acknowledge and understand that in the event that any of these items are changed, the locked-in interest rate and terms above may no longer be valid and a new lock-in agreement will have to be entered into and another lock-in fee may be charged.

Borrower _____ Date _____

Borrower _____ Date _____

Broker/Lender Representative Name (Printed) _____

Broker/Lender Representative Signature _____ Date _____

MODEL FORM

IDAHO PREPAYMENT PENALTY DISCLOSURE

If you, the borrower(s), pay off or refinance your mortgage loan before the date for repayment stated in the loan agreement, you may be charged a prepayment charge.

A prepayment penalty charge may be significant. Prior to signing any documents, make sure you fully understand the prepayment charge provisions outlined in your loan agreement.

Your signature acknowledges that you have been advised that a prepayment penalty charge may be a condition of your loan.

Applicant _____

Date _____

Applicant _____

Date _____

STATE OF IDAHO

IDAHO RESIDENTIAL MORTGAGE
PRACTICES ACT



DEPARTMENT OF FINANCE

Amended Through 2005

RESIDENTIAL MORTGAGE PRACTICES ACT

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RESIDENTIAL MORTGAGE PRACTICES ACT

CHAPTER 31, TITLE 26, IDAHO CODE

26-3101. SHORT TITLE. This chapter shall be known and may be cited as the "Residential Mortgage Practices Act."

26-3102. DEFINITIONS. As used in this chapter and in rules promulgated pursuant to this chapter:

- (1) "Act" means this Idaho residential mortgage practices act.
- (2) "Agent" means a person who acts with the consent and on behalf of a licensee, and is subject to the licensee's direct or indirect control, and may include an independent contractor.
- (3) "Borrower" means the person who has applied for a residential mortgage loan from a licensee, or person required to be licensed, under this chapter, or on whose behalf the activities set forth in subsection (18), (19), or (20) of this section are conducted.
- (4) "Department" means the department of finance of the state of Idaho.
- (5) "Director" means the director of the department of finance.
- (6) "Licensee" means a person licensed pursuant to this chapter to engage in the activities regulated by this act.
- (7) "Mortgage lender" means any person, other than an exempt person, who makes residential mortgage loans to borrowers, and performs the activities described in subsection (18) of this section.
- (8) "Mortgage broker" means any person, other than an exempt person, who performs the activities described in subsection (19) of this section with respect to a residential mortgage loan. For the purposes of this chapter, the term "mortgage broker" does not include persons who are mortgage lenders.
- (9) "Loan originator" means any person, other than an exempt person, who performs the activities described in subsection (20) of this section with respect to a residential mortgage loan. For the purposes of this chapter, the term "loan originator" does not include persons who are mortgage brokers or mortgage lenders.
- (10) "Mortgage brokerage agreement" means a written agreement in which a mortgage broker agrees to obtain a residential mortgage loan for the borrower or assist the borrower in obtaining a residential mortgage loan.
- (11) "Person" means an individual, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other association of individuals, however organized.
- (12) "Real estate settlement procedures act" means the act set forth in 12 U.S.C. section 2601 et seq., as amended to and including January 1, 2005, or a subsequent date if so defined by administrative rule.
- (13) "Regulation X" means regulation X as promulgated by the U.S. department of housing and urban development and codified in 24 CFR part 3500 et seq., as amended to and including January 1, 2005, or a subsequent date if so defined by administrative rule.
- (14) "Regulation Z" means regulation Z as promulgated by the board of governors of the federal reserve system and codified in 12 CFR part 226 et seq., as amended to and including January 1, 2005, or a subsequent date if so defined by administrative rule.

(15) "Residential mortgage loan" means a loan made primarily for personal, family, or household use and primarily secured by a security interest on residential real property located in this state.

(16) "Residential real property" means real property located in this state improved by a one (1) to four (4) family dwelling.

(17) "Truth in lending act" means the act set forth in 15 U.S.C. section 1601 et seq., as amended to and including January 1, 2005, or a subsequent date if so defined by administrative rule.

(18) "Mortgage lending activities" means for compensation or gain, either directly or indirectly, accepting or offering to accept applications for residential mortgage loans, assisting or offering to assist in the preparation of an application for a residential mortgage loan.

(19) "Mortgage brokering activities" means for compensation or gain, either directly or indirectly, accepting or offering to accept an application for a residential mortgage loan, assisting or offering to assist in the preparation of an application for a residential mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with any person making residential mortgage loans.

(20) "Loan origination activities" means for compensation or gain, either directly or indirectly, engaging in any of the following activities while representing or acting on behalf of a mortgage broker or mortgage lender:

(a) Soliciting, accepting, or offering to accept an application for a residential mortgage loan;

(b) Assisting a borrower or offering to assist a borrower in the preparation of a residential mortgage loan application; or

(c) Negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with a borrower.

26-3103. EXEMPTIONS. The provisions of this chapter do not apply to:

(1) Agencies of the United States and agencies of this state and its political subdivisions;

(2) An owner of real property who offers credit secured by a contract of sale, mortgage or deed of trust on the property sold;

(3) A loan that is made by a person to an employee of that person if the proceeds of the loan are used to assist the employee in meeting his housing needs;

(4) Regulated lenders licensed under the Idaho credit code and regularly engaged in making regulated consumer loans other than those secured by a security interest in real property;

(5) Trust companies as defined in section 26-3203, Idaho Code;

(6) Any person licensed or chartered under the laws of any state or of the United States as a bank, savings and loan association, credit union, or industrial loan company. The terms "bank," "savings and loan association," "credit union" and "industrial loan company" shall include employees and agents of such organizations as well as wholly-owned subsidiaries of such organizations, provided that the subsidiary is regularly examined by the chartering state or federal agency for consumer compliance purposes, and shall also include employees and agents of a licensee if the licensee is an affiliate of a bank and is wholly owned by the holding company system that owns the bank;

(7) Attorneys, or persons licensed under chapter 2, title 54, Idaho Code, provided that the license held by such attorneys or persons is in an active status;

(8) Persons employed by, or who contract with, a licensee under this chapter to perform only clerical or administrative functions on behalf of such licensee, and who do not solicit borrowers or negotiate the terms of loans on behalf of the licensee;

(9) Any person or entity not making more than five (5) loans primarily for personal, family, or household use and primarily secured by a security interest on residential real property, with his own funds for his own investment, in any period of twelve (12) consecutive months; nor

(10) Any person who funds a residential mortgage loan which has been originated and processed by a licensee or by an exempt person, who does not directly or indirectly solicit borrowers in this state for the purpose of making residential mortgage loans, and who does not participate in the negotiation of residential mortgage loans with the borrower. For the purpose of this subsection, "negotiation of residential mortgage loans" does not include setting the terms under which a person may buy or fund a residential mortgage loan originated by a licensee or exempt person.

26-3104. UNLAWFUL ACTS.

(1) Any person, except a person exempt under section 26-3103, Idaho Code, who engages in mortgage brokering or mortgage lending activities without first obtaining a mortgage broker or mortgage lender license in accordance with this chapter, shall be guilty of a felony.

(2) Any person, not exempt under section 26-3103, Idaho Code, who engages in loan origination activities without first obtaining a loan originator license in accordance with this chapter, shall be guilty of a felony.

26-3105. POWERS AND DUTIES OF DIRECTOR. In addition to any other duties imposed upon the director by law, the director shall:

(1) Administer and enforce the provisions and requirements of this chapter;

(2) Conduct investigations and issue subpoenas as necessary to determine whether a person has violated any provision of this chapter or rules promulgated under the authority of this chapter;

(3) Conduct examinations of the books and records of licensees and conduct investigations as necessary and proper for the enforcement of the provisions of this chapter and the rules promulgated under the authority of this chapter;

(4) Appoint a volunteer advisory board which shall consist of two (2) individuals who are mortgage lenders and two (2) individuals who are mortgage brokers;

(5) Pursuant to chapter 52, title 67, Idaho Code, issue orders and promulgate rules that, in the opinion of the director, are necessary to execute, enforce and effectuate the purposes of this chapter;

(6) Be authorized to set, by annual written notification to licensees, limits on the fees and charges which are set forth in subsections (1) and (2) of section 26-3113, Idaho Code;

(7) Require that all funds collected by the department under this chapter be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code; and

(8) Review and approve forms used by licensees prior to their use as prescribed by the director.

26-3106. REMEDIES AVAILABLE TO THE DEPARTMENT. (1) Whenever it appears to the director that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of the truth in lending act, the real estate settlement procedures act, regulation X, regulation Z, or of this chapter or any rule or order under this chapter, he may in his

discretion bring an action in any court of competent jurisdiction, and upon a showing of any violation there shall be granted any or all of the following:

- (a) A writ or order restraining or enjoining temporarily or permanently, any act or practice violating any provision of this chapter or any rule promulgated pursuant thereto, and to enforce compliance under this chapter or any rule or order hereunder;
- (b) An order that the person violating any provision of this chapter, or a rule or order hereunder pay a civil penalty to the department in an amount not to exceed five thousand dollars (\$5,000) for each violation;
- (c) An order allowing the director to recover costs which may include investigative expenses and attorney's fees;
- (d) An order granting a declaratory judgment that a particular act, practice or method is a violation of the provisions of this chapter;
- (e) An order granting other appropriate remedies including restitution to borrowers for excess charges or actual damages.

(2) If the director finds that a person has violated or is violating, or that there is reasonable cause to believe that a person is about to violate the provisions of this chapter, the director may, in his discretion, order the person to cease and desist from the violations.

26-3107. BORROWERS' REMEDIES NOT AFFECTED. The grant of powers to the director in this chapter does not limit remedies available to borrowers under this chapter or under other principles of law or equity.

26-3108. LICENSE TO DO BUSINESS AS A MORTGAGE BROKER OR MORTGAGE LENDER.

(1) The director shall receive and act on all applications for licenses to do business as a mortgage broker or mortgage lender. Applications shall be filed in the manner prescribed by the director, shall contain such information as the director may reasonably require, shall be updated as necessary to keep the information current, and shall be accompanied by an application fee of three hundred fifty dollars (\$350). When an application for licensure is denied or withdrawn, the director shall retain all fees paid by the applicant.

(2) An application for license may be denied if the director finds that:

- (a) The financial responsibility, character, and fitness of the license applicant, and of the officers and directors thereof, if the applicant is a corporation, partners thereof if the applicant is a partnership, members or managers thereof if the applicant is a limited liability company, and individuals designated in charge of the applicant's places of business, are not such as to warrant belief that the business will be operated honestly and fairly within the purposes of this chapter;
- (b) The individual designated in charge of applicant's places of business does not have a minimum of three (3) years' experience in residential mortgage lending;
- (c) The applicant has been convicted of any felony or a misdemeanor involving any aspect of the financial services business, or a court has accepted a finding of guilt on the part of the applicant of any felony or a misdemeanor involving any aspect of the financial services business;
- (d) The applicant has had a license, substantially equivalent to a license under this chapter and issued by any state, denied, revoked or suspended under the law of such state;
- (e) The applicant has filed an application for a license which is false or misleading with

respect to any material fact;

(f) The applicant or any partner, officer, director, manager, member, employee or agent of the applicant has violated this chapter or any rule or order lawfully made pursuant to this chapter;

(g) The applicant or any partner, officer, director, manager, member, employee or agent of the applicant has violated any state or federal law, rule or regulation pertaining to the financial services industry; or

(h) The applicant has not provided information on the application as reasonably required by the director pursuant to subsection (1) of this section.

(3) The director is empowered to conduct investigations as he may deem necessary, to enable him to determine the existence of the requirements set out in subsection (2) of this section.

(4) Upon written request, an applicant is entitled to a hearing on the question of his qualifications for a license if:

(a) The director has notified the applicant in writing that his application has been denied, or objections filed;

(b) The director has not issued a license within sixty (60) days after the application for the license was filed. If a hearing is held, the applicant and those filing objections shall reimburse, pro rata, the director for his reasonable and necessary expenses incurred as a result of the hearing. A request for hearing may not be made more than fifteen (15) days after the director has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the director's finding supporting denial of the application or that objections have been filed and the substance thereof.

(5) Every licensee under this section shall maintain a home office licensed under this chapter as the licensee's principal location for the transaction of mortgage business. The director may, on application, issue additional branch licenses to the same licensee upon compliance with all the provisions of this chapter governing the issuance of a single license. A separate license shall be required for each place of business from which mortgage brokering activities or mortgage lending activities are directly or indirectly conducted. The individual in charge of each place of business must satisfy the requirements of subsections (2)(b), (c) and (d) of this section. Each license under this section shall remain in full force and effect unless the licensee does not satisfy the renewal requirements of section 26-3111(3), Idaho Code, or the license is relinquished, suspended, or revoked; provided however, branch licenses shall be terminated upon the relinquishment or revocation of a home office license.

(6) No licensee under this section shall change the location of any place of business, consolidate two (2) or more locations, or close any home office location, without giving the director at least fifteen (15) days' prior written notice. A licensee under this section shall give written notice to the director within three (3) business days of the closure of any branch location licensed under this chapter. Written notice of the closure of a home or branch office location shall include a detailed explanation of the disposition of all loan applications pending at the time of closure of the licensed location.

(7) No licensee under this section shall engage in the business of making or brokering residential mortgage loans at any place of business for which he does not hold a license nor shall he engage in business under any other name than that on the license.

(8) The director may suspend action upon a mortgage broker or mortgage lender license application pending resolution of any criminal charges before any court of competent jurisdiction against an applicant which could disqualify that applicant if convicted.

(9) The director may suspend action upon a mortgage broker or mortgage lender license application pending resolution of any civil action or administrative proceeding against an applicant in which the civil action or administrative proceeding involves any aspect of a financial service business and the outcome of which could disqualify the applicant.

(10) An applicant under this section shall make complete disclosure of all information required in the application, including information concerning officers, directors, partners, members, managers, employees or agents. An applicant, or an individual acting on behalf of the applicant, is not liable in any civil action other than a civil action brought by a governmental agency, related to an alleged untrue statement made pursuant to this section unless it is shown by clear and convincing evidence that:

(a) The applicant, or an individual acting on behalf of the applicant, knew at the time that the statement was made that it was false in any material respect; or

(b) The applicant, or an individual acting on behalf of the applicant, acted in reckless disregard as to the statement's truth or falsity.

(11) Each mortgage broker or mortgage lender licensed under this chapter shall display in plain view the certificate of licensure issued by the department in its principal office and in each branch office.

26-3108A. LICENSE TO DO BUSINESS AS A LOAN ORIGINATOR.

(1) The director shall receive and act on all loan originator license applications. Applications shall be filed in the manner prescribed by the director, shall contain such information as the director may reasonably require, shall be updated as necessary to keep the information current, and shall be accompanied by an application fee of two hundred dollars (\$200). When an application for licensure is denied or withdrawn, the director shall retain all fees paid by the applicant.

(2) An application for license may be denied if the director finds that:

(a) The financial responsibility, character, and fitness of the license applicant are not such as to warrant belief that the loan originator will operate honestly and fairly within the purposes of this chapter;

(b) The applicant has been convicted of any felony or a misdemeanor involving any aspect of the financial services business, or a court has accepted a finding of guilt on the part of the applicant of any felony or a misdemeanor involving any aspect of the financial services business;

(c) The applicant has had a license, substantially equivalent to a license under this chapter and issued by any state, denied, revoked or suspended under the law of such state;

(d) The applicant has filed an application for a license which is false or misleading with respect to any material fact;

(e) The applicant has violated this chapter or any rule or order lawfully made pursuant to this chapter;

(f) The applicant has violated any state or federal law, rule or regulation pertaining to mortgage brokering, mortgage lending, or loan origination activities set forth in section 26-3102, Idaho Code; or

(g) The applicant has not provided information on the application as reasonably required by the director pursuant to subsection (1) of this section.

(3) The director is empowered to conduct investigations as he may deem necessary, to enable him to determine the existence of the requirements set out in subsection (2) of this section.

(4) Upon written request, an applicant is entitled to a hearing on the question of his

qualifications for a license if:

(a) The director has notified the applicant in writing that his application has been denied, or objections filed;

(b) The director has not issued a license within sixty (60) days after the application for the license was filed. If a hearing is held, the applicant and those filing objections shall reimburse, pro rata, the director for his reasonable and necessary expenses incurred as a result of the hearing. A request for hearing may not be made more than fifteen (15) days after the director has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the director's finding supporting denial of the application or that objections have been filed and the substance thereof.

(5) A loan originator may transact business only for a mortgage broker or mortgage lender licensed in accordance with the provisions of this chapter. The original license issued by the department to a loan originator must be provided to and be maintained by the employing mortgage broker or mortgage lender at the mortgage broker's or lender's main office. A copy of the loan originator's license must be displayed at the office where that loan originator principally transacts business.

(6) Each license under this section shall remain in full force and effect unless the licensee does not satisfy the renewal requirements of section 26-3111(4), Idaho Code, or the license is relinquished, suspended or revoked.

(7) A loan originator licensee under this chapter shall not engage in loan origination activities at any location that is not a licensed home or branch office location of the mortgage broker or mortgage lender he represents or is acting on behalf of, nor shall he engage in loan origination activities under any other name than that on the license.

(8) The director may suspend action upon a loan originator license application pending resolution of any criminal charges before any court of competent jurisdiction against an applicant which could disqualify that applicant if convicted.

(9) The director may suspend action upon a loan originator license application pending resolution of any civil action or administrative proceeding against an applicant, in which the civil action or administrative proceeding involves any aspect of a financial service business and the outcome of which could disqualify the applicant.

(10) An applicant under this section shall make complete disclosure of all information required in the application. An applicant, or an individual acting on behalf of the applicant, is not liable in any civil action other than a civil action brought by a governmental agency, related to an alleged untrue statement made pursuant to this section unless it is shown by clear and convincing evidence that:

(a) The applicant, or an individual acting on behalf of the applicant, knew at the time that the statement was made that it was false in any material respect; or

(b) The applicant, or an individual acting on behalf of the applicant, acted in reckless disregard as to the statement's truth or falsity.

26-3109. REVOCATION OR SUSPENSION OF LICENSE. (1) If the department has reason to believe that grounds exist for revocation or suspension of a license, the department may initiate a contested case against a mortgage broker, mortgage lender or loan originator, and any partner, officer, director, manager, member, employee or agent whose activities constitute the basis for revocation or suspension, in accordance with chapter 52, title 67, Idaho Code. The director may,

after proceedings pursuant to chapter 52, title 67, Idaho Code, suspend the license for a period not to exceed six (6) months, or revoke the license, if he finds that:

- (a) The licensee or any partner, officer, director, manager, member, employee or agent of the licensee has violated this chapter or any rule or order lawfully made pursuant to this chapter; or
- (b) The licensee or any partner, officer, director, manager, member, employee or agent of the licensee has violated any state or federal law, rule or regulation pertaining to mortgage brokering, mortgage lending, or loan origination activities set forth in section 26-3102, Idaho Code; or
- (c) Facts or conditions exist which would clearly have justified the director in refusing to grant a license had these facts or conditions been known to exist at the time the license was issued; or
- (d) The licensee or any partner, officer, director, manager, member, employee or agent of the licensee has been convicted of any felony or a misdemeanor involving any aspect of the financial services business, or a court has accepted a finding of guilt on the part of the licensee or partner, officer, director, manager, member, employee or agent of the licensee, of any felony or a misdemeanor involving any aspect of the financial services business; or
- (e) The licensee or any partner, officer, director, manager, member, employee or agent of the licensee has had a license substantially equivalent to a license under this chapter, and issued by another state, denied, revoked or suspended under the laws of such state; or
- (f) The licensee has filed an application for a license which as of the date the license was issued, or as of the date of an order denying, suspending or revoking a license, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or
- (g) The mortgage broker or mortgage lender licensee has employed, or has entered into a contractual relationship with, any person who performs loan origination activities for the licensee without first obtaining a loan originator license under this chapter; or
- (h) The mortgage broker or mortgage lender licensee has failed to notify the director of the employment or termination of, or the entering into or termination of a contractual relationship with, a licensed loan originator pursuant to section 26-3111(2), Idaho Code; or
- (i) The mortgage broker or mortgage lender licensee has failed to supervise diligently and control the mortgage-related activities of a loan originator employed by the licensee.

(2) If the director finds that probable cause for revocation of a license exists and that enforcement of this chapter and the public interest require immediate suspension of the license pending investigation, he may, after a hearing upon five (5) days' written notice, enter an order suspending the license for not more than thirty (30) days.

(3) Any licensee may relinquish the license by notifying the department in writing of its relinquishment, but this relinquishment shall not affect his liability for acts previously committed, and may not occur after the filing of a complaint for revocation of the license.

(4) The director may, in his discretion, reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would justify the department in refusing to grant a license.

26-3110. SURETY BONDS AND CONTINUING EDUCATION.

(1) All mortgage broker and mortgage lender licensees, with or without an office located in this state, shall maintain a surety bond to the state of Idaho in accordance with this section. The bond

to be maintained shall be in the amount of twenty-five thousand dollars (\$25,000). This amount shall be increased by additional sums of ten thousand dollars (\$10,000) for each licensed branch office. The bond shall be a continuing obligation of the issuing surety. The surety's liability under the bond for any claims made thereunder either individually or in the aggregate shall in no event exceed the face amount of the bond issued. The bond shall be issued by a surety authorized to do business in the state of Idaho. The licensee shall place the bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, on file with the department. In lieu of the bonds required by this section, a certificate of deposit issued by an Idaho bank and made payable to the director may be provided to the director in the same principal amount as required for bonds. The interest on the certificate of deposit shall be payable to the licensee. The certificate of deposit shall be maintained at all times during which the licensee is authorized to conduct mortgage brokering or mortgage lending activities under this chapter, and must provide that it will remain in effect for at least three (3) years following discontinuance of operations unless released earlier by the director.

(2) All loan originator licensees under this chapter, whether operating within or outside of the state of Idaho, shall maintain a surety bond to the state of Idaho in accordance with this section. The bond to be maintained shall be in the amount of ten thousand dollars (\$10,000). The surety's liability under the bond for any claims made thereunder either individually or in the aggregate shall in no event exceed the face amount of the bond issued. The bond shall be issued by a surety authorized to do business in the state of Idaho. The licensee shall place the bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, on file with the department. In lieu of the bond required by this section, a certificate of deposit issued by an Idaho bank and made payable to the director may be provided to the director in the same principal amount as required for a bond. The interest on the certificate of deposit shall be payable to the licensee. The certificate of deposit shall be maintained at all times during which the licensee is authorized to conduct loan origination activities under this chapter, and must provide that it will remain in effect for at least three (3) years following discontinuance of operations unless released earlier by the director.

(3) In the event that a licensee under this chapter, or any employee or agent of such licensee, has violated any of the provisions of this chapter or of a rule or order lawfully made pursuant to this chapter, or federal law or regulation pertaining to loan origination, mortgage lending or mortgage brokering activities set forth in section 26-3102, Idaho Code, and has damaged any person by such violation, then the bond shall be forfeited and paid by the surety to the state of Idaho for the benefit of any person so damaged.

(4) (a) The director may adopt rules to require continuing education of licensees under this chapter for the purpose of enhancing the professional competence and the professional responsibility of all licensees. The rules may include, but shall not be limited to, criteria for the content of continuing education courses, the accreditation of continuing education sponsors and programs, the computation of continuing education credits, and general compliance with this subsection.

(b) Continuing professional education requirements shall be determined by the director, provided however, the requirements shall not exceed twenty (20) credit hours within a two (2) year period.

(c) The director may require accredited sponsors of continuing education programs to file information, in a manner prescribed by the director, regarding the contents and materials of proposed courses to satisfy the education requirements with the director for review and approval. The director may set fees for the initial and continuing review of courses for which

credit hours will be granted. The initial filing fee for review of materials shall not exceed five hundred dollars (\$500) and the fee for continued review shall not exceed two hundred fifty dollars (\$250) per annum per course offered.

26-3111. RECORDS -- ANNUAL REPORTS -- RENEWAL OF LICENSE.

(1) Every licensee shall maintain records, including financial records, in conformity with generally accepted accounting principles, in a manner that will enable the director to determine whether the licensee is complying with the provisions of this chapter. The recordkeeping system of a licensee shall be sufficient if he makes the required information reasonably available. The records need not be kept in the place of business where residential mortgage loans are made, if the director is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than three (3) years after making the final entry relating to the loan.

(2) Any mortgage broker or mortgage lender licensee who employs or contracts with a loan originator licensee, for the purpose of conducting loan origination activities, shall:

(a) Notify the director of the employment of, or contractual relationship with, a loan originator licensee within thirty (30) days of such employment or contract. Notification shall be made in a manner prescribed by the director;

(b) Notify the director of the termination of employment of, or contractual relationship with, a loan originator licensee within thirty (30) days of such termination. Notification shall be made in a manner prescribed by the director; and

(c) Maintain any records relating to the employment of, or contractual relationship with, a loan originator licensee, for a period not to exceed three (3) years.

(3) On or before August 31 of each year, every mortgage broker and mortgage lender licensee under this chapter shall pay an annual license renewal fee of one hundred fifty dollars (\$150), and file with the director a renewal form containing such information as the director may require and a composite annual report for the residential mortgage loans made or brokered by him.

(4) On or before October 31 of each year, every loan originator licensee under this chapter shall pay an annual license renewal fee of one hundred dollars (\$100), and file with the director a renewal form containing such information as the director may require.

26-3112. EXAMINATION AND INVESTIGATIONS.

(1) The director shall examine periodically at intervals he deems appropriate, the loans and business records of each licensee. In addition, for the purpose of discovering violations of the provisions of this chapter or securing information lawfully required, the director may at any time investigate the loans, business, books and records of any such licensee. For these purposes, he shall have free and reasonable access to the offices, places of business, and books and records of the licensee. The director, for purposes of examination of licensees herein, shall be paid the actual cost of examination by the licensee, within thirty (30) days of the examination.

(2) If a licensee's records are located outside this state, the licensee shall have the option to make them available to the director at a convenient location within this state, or pay the reasonable and necessary expenses for the director or his representative to examine them at the place where they are maintained. The director may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(3) For the purposes of this section, the director may administer oaths or affirmations, and upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the

investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(4) Upon failure to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby the director may apply to the district court for an order compelling compliance.

26-3113. RESTRICTIONS ON FEES AND CHARGES. (1) With the exception of a loan cancellation fee, a licensee shall not require a borrower to pay any fees or charges prior to a residential mortgage loan closing, except:

(a) Charges actually incurred by the licensee on behalf of the borrower for services which have been rendered by third parties necessary to process the application. These fees may include, but are not limited to, fees for credit reports, flood insurance certifications, property inspections, title insurance commitments, UCC-4 lien searches, and appraisals;

(b) An application fee;

(c) A rate-lock fee; and

(d) A commitment fee upon approval of the residential mortgage loan.

(2) A loan cancellation fee may be charged and collected by a licensee at any time either prior to the scheduled closing of a residential mortgage loan transaction or subsequent thereto.

(3) Any fees charged under the authority of this section must be reasonable and customary as to the type and the amount of the fee charged.

26-3114. PROHIBITED PRACTICES OF MORTGAGE BROKERS AND MORTGAGE LENDERS. No mortgage broker or mortgage lender licensee or person required under this chapter to have such license shall:

(1) Obtain any exclusive dealing or exclusive agency agreement from any borrower;

(2) Delay closing of any residential mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;

(3) Accept any fees at closing which were not previously disclosed fully to the borrower;

(4) Obtain any agreement or instrument in which blanks are left to be filled in after signing by a borrower;

(5) Engage in any misrepresentation in connection with a residential mortgage loan;

(6) Make payment, whether directly or indirectly, of any kind to any in-house or fee appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of any real estate which is to be covered by a residential mortgage loan;

(7) Make any false promises likely to influence or persuade, or pursue a course of misrepresentations and false promises through loan originators or other agents, or through advertising or otherwise;

(8) Misrepresent, circumvent or conceal, through whatever subterfuge or device, any of the material particulars or the nature thereof, regarding a residential mortgage loan transaction; nor

(9) Enter into any agreement, with or without the payment of a fee, to fix in advance a particular interest rate or other term in a residential mortgage loan unless written confirmation of the agreement is delivered to the borrower as required by rule pursuant to this chapter.

26-3114A. PROHIBITED PRACTICES OF LOAN ORIGINATORS. No loan

originator licensee or person required under this chapter to have such license shall:

- (1) Be employed simultaneously by more than one (1) mortgage broker or mortgage lender licensed under this chapter;
- (2) Enter into concurrent contractual relationships for delivery of loan origination services to more than one (1) licensee under this chapter;
- (3) Obtain any exclusive dealing or exclusive agency agreement from any borrower;
- (4) Delay closing of any residential mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;
- (5) Accept any fees at closing which were not previously disclosed fully to the borrower;
- (6) Obtain any agreement or instrument in which blanks are left to be filled in after signing by a borrower;
- (7) Engage in any misrepresentation in connection with a residential mortgage loan;
- (8) Make payment, whether directly or indirectly, of any kind to any in-house or fee appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of any real estate which is to be covered by a residential mortgage loan;
- (9) Make any false promises likely to influence or persuade, or pursue a course of misrepresentations and false promises through agents, solicitors, advertising or otherwise;
- (10) Misrepresent, circumvent or conceal, through whatever subterfuge or device, any of the material particulars or the nature thereof, regarding a residential mortgage loan transaction; nor
- (11) Enter into any agreement, with or without the payment of a fee, to fix in advance a particular interest rate or other term in a residential mortgage loan unless written confirmation of the agreement is delivered to the borrower as required by rule pursuant to this chapter.

26-3115. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstances is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

26-3116. INITIAL LICENSING AND COMPLIANCE. A person who conducts any of the activities set forth in subsections (18) and (19) of section 26-3102, Idaho Code, on the effective date of this act shall, within sixty (60) days following the effective date of this act, apply to the department for a license.

26-3116A. INITIAL LOAN ORIGINATOR LICENSING. A person who conducts any of the activities set forth in section 26-3102(20), Idaho Code, shall have sixty (60) days to apply to the department for a loan originator license following the effective date of the loan originator licensing provisions of this chapter and, notwithstanding the provisions of section 26-3108A, Idaho Code, shall pay an initial one (1) time reduced loan origination license application fee of one hundred dollars (\$100).

26-3117. RELATIONSHIP TO OTHER LAWS. (1) All political subdivisions of this state shall be prohibited from enacting and enforcing ordinances, resolutions, regulations and rules pertaining to the financial or lending activities of persons who:

- (a) Are subject to the jurisdiction of the department, including those whose activities are subject to this chapter;
- (b) Are subject to the jurisdiction or regulatory supervision of the board of governors of the

federal reserve system, the office of the comptroller of the currency, the office of thrift supervision, the national credit union administration, the federal deposit insurance corporation, the federal trade commission or the United States department of housing and urban development; or

(c) Originate, purchase, sell, assign, securitize or service property interests or obligations created by financial transactions or loans made, executed or originated by persons referred to in paragraph (a) or (b) of this subsection or who assist or facilitate such transactions.

(2) The requirements of this subsection shall apply to all ordinances, resolutions and rules pertaining to financial or lending activities, including any ordinances, resolutions or rules disqualifying persons from doing business with a political subdivision based upon financial or lending activities or imposing reporting requirements or any other obligations upon persons regarding financial or lending activities.

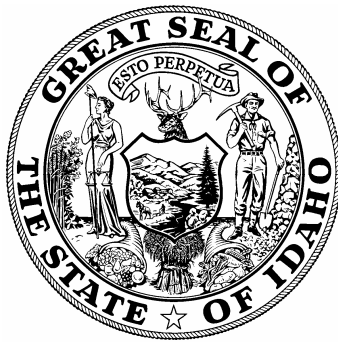
RESIDENTIAL MORTGAGE PRACTICES ACT

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STATE OF IDAHO
AN UNOFFICIAL COPY OF THE RULES
PURSUANT TO THE IDAHO
RESIDENTIAL MORTGAGE
PRACTICES ACT



DEPARTMENT OF FINANCE

Effective Date, November 1, 1998

IDAPA 12
TITLE 01
Chapter 10

RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT
DIRECTOR OF THE DEPARTMENT OF FINANCE

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IDAPA 12
TITLE 01
Chapter 10

RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT
DIRECTOR OF THE DEPARTMENT OF FINANCE

000. LEGAL AUTHORITY (Rule 0).

This chapter is promulgated pursuant to Section 26-3105(5), Idaho Code. (11-1-98)

001. TITLE AND SCOPE (Rule 1).

The title of this chapter is "Rules Pursuant to the Idaho Residential Mortgage Practices Act" of the Idaho Department of Finance and may be cited as IDAPA 12.01.10. These rules implement the Residential Mortgage Practices Act, Title 26, Chapter 31. (11-1-98)

002. WRITTEN INTERPRETATIONS-AGENCY ACCESS-FILINGS (Rule 2).

Written interpretations of these rules are available by mail from the Department of Finance, P.O. Box 83720, Boise, Idaho 83720-0031. The street address of the agency is Department of Finance, Joe R. Williams Building, 700 West State Street, Boise, Idaho, 83720-0031. The telephone numbers of the agency include (208) 332-8000 - Administration; and (208) 332-8004 - Residential Mortgage. The telephone number of the facsimile machine is (208) 332-8099. All filings with the agency in connection with rule-making or contested cases shall be made with the Director of the Department of Finance, and shall include an original and one (1) copy. (11-1-98)

003. ADMINISTRATIVE APPEALS (Rule 3).

Administrative appeals are not available within the agency. (11-1-98)

004. PUBLIC RECORDS ACT COMPLIANCE (Rule 4).

All rules contained in this chapter are public records. (11-1-98)

005. INCORPORATION BY REFERENCE (Rule 5).

IDAPA 12.01.10, "Rules Pursuant to the Idaho Residential Mortgage Practices Act," incorporates by reference the full text of the following federal laws and regulations: the Real Estate Settlement Procedures Act, as amended, 12 USCA 2601, et seq., 88 Stat. 1724, Pub. L. 93-533; Department of Housing and Urban Development's Regulation X, Real Estate Settlement Procedures Act, 24 CFR 3500, as amended; Regulation Z, Truth in Lending, 12 CFR 226, as amended; and, the Truth in Lending Act, as amended, 15 USCA 1601, et seq., 82 Stat. 146, Pub. L. 90-321. (11-1-98)

006. DEFINITIONS (Rule 6).

As used in these rules:

01. Closing. Means the process of executing legally binding documents regarding a lien on property that is subject to a residential mortgage loan. (11-1-98)

RULE 10

02. Real Estate Settlement Procedures Act. Means the Real Estate Settlement Procedure Act, as amended, 12 USCA 2601, et seq., 88 Stat. 1724, Pub. L. 93-533. (11-1-98)

03. Regulation X. Means the Department of Housing and Urban Development's Regulation X, Real Estate Settlement Procedure Act, 24 CFR 3500, as amended. (11-1-98)

04. Regulation Z. Means Regulation Z, Truth in Lending, 12 CFR 226, as amended. (11-1-98)

05. Truth In Lending Act. Means the Truth in Lending Act, as amended, 15 USCA 1601, et seq., 82 Stat. 146, Pub. L. 90-321. (11-1-98)

007. -- 009. (RESERVED).

010. TRUST ACCOUNT (Rule 10).

01. Establishment Of Trust Account. Each licensee shall, as trustee, hold all borrower funds received prior to closing in a trust account established at a financial institution located in this state. The funds may not be used for the benefit of the licensee or any person not entitled to such benefit. Each licensee is responsible for depositing, holding, disbursing, accounting for, and otherwise dealing with the funds, in accordance with these rules. (11-1-98)

02. Designation Of Trust Account(s). Each account holding borrower funds must be designated as a trust account in the name of the licensee as it appears on its license. All checks must be prenumbered by the supplier (printer) and bear upon the front of the check the identifying words, "trust account". (11-1-98)

03. Required Trust Account Records And Procedures. Each licensee shall maintain as part of its books and records: (11-1-98)

a. A trust account deposit register that includes a copy of each check deposited into the trust account and the corresponding deposit slip for each deposit to the trust account; (11-1-98)

b. A ledger for the trust account. Licensees may maintain either one (1) ledger for the entire trust account or an individual subaccount ledger sheet for each borrower. A trust account ledger must identify each borrower from whom funds deposited to the trust account are received. Each receipt and disbursement pertaining to such funds must be posted to the ledger sheet at the time the receipt or disbursement occurs. Entries to the ledger sheet must show the date of deposit, identifying check or instrument number, amount and name of remitter. Offsetting entries to the ledger sheet must show the date of check, check number, amount of check, name of payee and invoice number if any; (11-1-98)

c. A trust account check register that includes either a copy of each check written on the trust account or the canceled checks provided by the licensee's financial institution; and (11-1-98)

RULE 10

d. Trust account bank statements. (11-1-98)

04. Trust Account Deposit Requirements. (11-1-98)

a. All funds received from borrowers or on behalf of borrowers prior to closing must be deposited in the trust account prior to the end of the third business day following receipt. Each check or money order shall be endorsed "for deposit only" with the licensee's trust account number. (11-1-98)

b. All deposits to the trust account(s) must be documented by a bank deposit slip which has been validated by bank imprint, or by an attached deposit receipt which bears the signature of an authorized representative of the licensee indicating that the funds were actually deposited into the proper account(s). (11-1-98)

c. Receipt of funds by wire transfer or any means other than cash, check or money order, must be posted in the same manner as other receipts. Any such transfer of funds must include a traceable identifying name or number supplied by the financial institution or transferring entity. The licensee must also retain a receipt for the deposit of the funds which must contain the traceable identifying name or number supplied by the financial institution or transferring entity. (11-1-98)

05. Trust Account Disbursement Requirements. (11-1-98)

a. Each licensee is responsible for the disbursement of all trust account funds, whether disbursed by personal signature, signature plate, or signature of another person authorized to act on the licensee's behalf. (11-1-98)

b. All disbursements of trust funds must be made by check, drawn on the trust account, and identified on the check as pertaining to a specific third-party provider transaction or borrower refund. The number of each check, amount, date, and payee must be shown in the trust account(s) check ledger as written on the check. (11-1-98)

c. Disbursements may be made from the trust account(s) for the payment of bona fide third-party providers' services rendered in the course of the borrower's loan origination, if the borrower has consented in writing to the payment. Such consent may be given at any time during the application process and in any written form, provided that it contains sufficient detail to verify the borrower's consent to the use of trust funds. (11-1-98)

d. There shall be no erasures or white-out corrections in any of the trust account records (checks, deposits, ledgers, subledgers, bank statements or reconcilements). All corrections shall be done by drawing a single line through the erroneous entry, leaving it legible, and making an entirely new entry to replace it. (11-1-98)

RULE 40

e. Borrower funds held by the licensee must be remitted to the borrower within thirty (30) business days of the determination that all payments to third-party providers owed by the borrower have been satisfied. (11-1-98)

f. Any trust funds held by the licensee for a borrower who cannot be located must be remitted in compliance with Section 14-506, Idaho Code. (11-1-98)

06. Computerized Accounting System Requirements. The following additional requirements apply to computerized accounting systems: (11-1-98)

a. The system must provide the capability to back-up data files; and (11-1-98)

b. All checks written must be included within the computer accounting system. (11-1-98)

011. -- 039. (RESERVED).

040. DECEPTIVE ADVERTISING (Rule 40).

01. Advertising. Advertising means making or permitting to be made any oral, written, graphic or pictorial statements, in any manner, in the course of the solicitation of business. Deceptive advertising is defined to include the following practices by a licensee: (11-1-98)

a. Making a representation or statement of fact in an advertisement if the representation or statement is false or misleading, or if the licensee does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based. (11-1-98)

b. Advertising without clearly and conspicuously disclosing the licensee's business name. (11-1-98)

c. Engaging in bait advertising or misrepresenting, directly or indirectly the terms, conditions or charges incident to the mortgage loan being advertised. Bait advertising, for these purposes, means an alluring, but insincere offer to procure, arrange, or otherwise assist a borrower in obtaining a mortgage loan on terms which the licensee cannot, does not intend, or want to provide, or which the licensee knows cannot be reasonably provided. Its purpose is to switch borrowers from buying the advertised mortgage loan product to buying a different mortgage loan product, usually at a higher rate or on a basis more advantageous to the licensee. (11-1-98)

d. Advertising an address at which the licensee conducts no mortgage brokering or banking activities. (11-1-98)

041. -- 049. (RESERVED).

050. WRITTEN DISCLOSURES (RULE 50).

01. Upon Receipt Of A Loan Application. Upon receipt of a loan application, and before receipt of any moneys from a borrower, a licensee shall disclose to each borrower, in a form acceptable to the Director, information about the licensee, the services that a licensee may provide and the services that the licensee will provide. (11-1-98)

02. Information Provided Within Three Days. Within three (3) business days after application, the following information shall be provided to the borrower: (11-1-98)

a. Disclosures in compliance with the requirements of the federal Truth-in-Lending Act and Regulation Z. These include the annual percentage rate, finance charge, amount to be financed, total of all payments, number of payments, amount of each payment, amount of points or prepaid interest; and if a variable rate loan, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase on the monthly payment amount and total interest to be paid, and an example of the payment terms resulting from an increase for a loan in the approximate amount of the loan that is being requested. (11-1-98)

b. Disclosures through good faith estimates of settlement services in compliance with the requirements of the federal Real Estate Settlement Procedures Act and Regulation X. These disclosures include the itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, premium pricing, escrow fee, loan closing fee, property tax, insurance premium, structural or pest inspection and any mortgage broker or mortgage banker fees associated with the residential mortgage loan. (11-1-98)

03. Interest Rate Lock-In Agreement Not Entered. If, at the time of application, an interest rate lock-in agreement has not been entered, disclosure must be made to the borrower, in a form approved by the Director, that the disclosed interest rate and terms are subject to change. Such disclosure shall be provided to the borrower at the same time the Federal Truth-in-Lending disclosure is delivered. (11-1-98)

04. Licensee Enters Into A Lock-In Agreement. If a licensee enters into an interest rate lock-in agreement with a lender or represents to the borrower that the licensee has entered into a lock-in agreement, then within no more than three (3) business days thereafter, including Saturdays, the licensee shall deliver or send by first-class mail to the borrower, for the borrower's signature, a written confirmation of the term of the lock-in agreement. (11-1-98)

05. In Addition To Disclosures Required. In addition to the disclosures required under the federal Truth-in-Lending Act, if a prepayment penalty may be a condition of the residential mortgage loan offered to a borrower, that fact shall be separately disclosed in writing to the borrower and the borrower must agree in writing to accept that condition. The disclosure shall state that a prepayment

RULE 60

penalty provision imposes a charge if the borrower refinances or pays off the mortgage loan before the date for repayment stated in the loan agreement. This written disclosure shall be in a form approved by the Director, and shall be delivered at the same time the borrower is given the federal Truth-in-Lending disclosure. (11-1-98)

051. -- 059. (RESERVED).

060. PROHIBITED PRACTICES (Rule 60).

01. Prohibited Practices. It shall be a prohibited practice for any licensee to: (11-1-98)

a. Make any representation or statement of fact, or omit to state a material fact, if the representation, statement or omission is false or misleading or has the tendency or capacity to be misleading, or if the licensee or lender does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based. Such claims or omissions include but are not limited to the availability of funds, terms, conditions, or changes incident to the mortgage transaction, prepayment penalties and the possibility of refinancing. (11-1-98)

b. Fail to disburse funds in a timely manner, in accordance with any commitment or agreement with the borrower, either directly or through a broker: (11-1-98)

i. Either immediately upon closing of the loan in the case of a purchase/sale transaction; or (11-1-98)

ii. Immediately upon expiration of the three (3) day rescission period in the case of a refinancing, or taking of a junior mortgage on the existing residence of the borrower. (11-1-98)

c. Fail to give the borrower, upon the borrower's request, a reasonable opportunity (at least one (1) day) to review every document to be signed by the borrower, and every document which is required pursuant to these regulations, and other applicable laws, rules or regulations, prior to closing. (11-1-98)

d. Require a borrower to obtain or maintain fire insurance in an amount that exceeds the replacement value of the improvements to the real estate. (11-1-98)

e. Engage in any deceptive advertising as set forth in Section 040 (Rule 40).(11-1-98)

061. -- 069. (RESERVED).

070. FINANCIAL CONDITION (Rule 70).

Each licensee shall submit with the license application, and subsequent requests for renewals, a complete financial statement as of the most recent fiscal year end or fiscal quarter, that is prepared in accordance with Generally Accepted Accounting Principals (GAAP). The licensee shall submit a financial statement in one (1) of the following forms: (11-1-98)

01. CPA Statement. Compiled, reviewed, or audited by a certified public accountant; (11-1-98)

02. IRS Schedule L. Internal Revenue Service Schedule L for the most recent tax year and either the accompanying tax return or a certification signed by the licensee that the Schedule L is a true and correct copy of the Schedule L submitted to the Internal Revenue Service; or (11-1-98)

03. Other Approved Form. Any other form approved by the Director. (11-1-98)

071. -- 089. (RESERVED).

090. BORROWERS UNABLE TO OBTAIN LOANS (Rule 90).

If, for any reason, a licensee is unable to obtain a loan for a borrower, and the borrower has paid for an appraisal, the licensee shall give a copy of the appraisal to the borrower and transmit the originals, along with any other documents provided by the borrower, to any other licensee to whom the borrower directs that the documents be transmitted. The licensee must provide the copies or transmit the documents within three business days after the borrower makes the request in writing. (11-1-98)

091. -- 099. (RESERVED).

100. EXEMPT ENTITIES (Rule 100).

The terms "bank," "savings and loan association" and "credit union" shall include any first tier wholly owned subsidiary of such organization, industrial loan company or wholly owned subsidiary of an industrial loan company, provided that the subsidiary is regularly examined by the chartering state or federal agency for consumer compliance purposes. (11-1-98)

101. -- 999. (RESERVED).